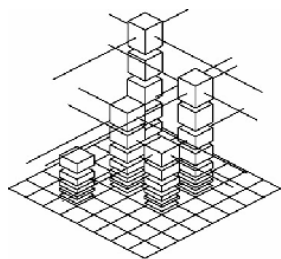


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EX PARTE LETTER

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington, DC 20554

October 7, 2004

Re: MB Docket No. 02-144, MM Docket No. 92-266, MM Docket No. 93-215,
CS Docket No. 94-28 and CS Docket No. 96-157

Dear Ms. Dortch,

The National Association of Telecommunications Officers and Advisors (NATOA) hereby submits this letter and its attached report in response to the Supplemental Comments in the above referenced proceeding filed by Cox Communications, Inc. on May 19, 2004. As a result of the Cox filing, NATOA retained the services of Front Range Consulting, Inc. for the purpose of providing local government with a full assessment of the continued viability of the FCC Form 1235 and any necessary revisions to such form in the event the Commission should consider its continued use.

Attached herewith is the complete report as prepared by Front Range Consulting, Inc. on behalf of NATOA. We respectfully request that this filing be placed in the record and be given due consideration in response to the issues raised by Cox in its Supplemental filing.

Respectfully submitted,

A handwritten signature in dark ink that reads "Libby Beaty". The signature is fluid and cursive, with the first name "Libby" and last name "Beaty" clearly distinguishable.

Libby Beaty
Executive Director

Attachment

cc: Peggy Greene
John Norton
John P. Spalding, Cox Communications
Gary S. Lutzger, Dow, Lohnes & Albertson

**White Paper
On
FCC Form 1235**

**Prepared for
The National Association of Telecommunications
Officers and Advisors**

**By
Richard D. Treich
CEO
Front Range Consulting, Inc.**

October 2004

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I. Introduction

The National Association of Telecommunications Officers and Advisors (NATOA) has engaged Front Range Consulting, Inc. (FRC) to prepare an analysis of the FCC Form 1235 Abbreviated Cost of Service Filing For Cable Network Upgrades and to identify areas where the Form 1235 allows cable operators to receive excessive rate increases.

II. Summary

The current Form 1235 instructions and FCC precedents need to be re-evaluated. The Form 1235 is increasingly used to significantly raise the Basic Service tier rates. The rationale behind the introduction of the Form 1235 in 1996 is no longer valid and should be reassessed in light of the cable industry's move to bundled service offerings and dramatically increased revenues from non-regulated sources. Cable system rebuilds and upgrades today focus more on the advanced services such as digital video, high speed Internet access and voice over Internet Protocol technologies and drastically less on analog video. With this new environment, the FCC should reduce the eligibility of this Form 1235 to operators completing only analog video system upgrades. To the extent the use of this Form is not restricted, the current set of instructions for completing the Form 1235 provide too many opportunities for cable operators to exploit these limited instructions and gain excessive returns on investment and significantly higher rates on Basic Service subscribers. The Form 1235 approach needs to be significantly modified to prevent unreasonable rates for Basic service subscribers.

III. Background

The FCC implemented the Form 1235 in 1996 in response to cable industry complaints that there were too few incentives in the regulatory scheme established by the FCC for operators to increase bandwidth and make additional channels available on either the Basic Service or the Cable Programming Service tiers. Until that time the rate rules generally only allowed a cable operator to add \$0.01 to the service rate for each new channel added, exclusive of programming costs. Cable operators argued that this limited incentive did not cover the costs of upgrading the physical plant and making additional services available on the regulated tiers. The Form 1235 was created to develop a “cost-of-service” type rate based on the cost of the operator upgrading its system to provide expanded analog video services.

In developing FCC Form 1235, the FCC allowed the cost of the upgraded investment to be allocated to both the regulated (Basic Service and Cable Programming Service) and un-regulated (Premium and Pay-Per-View) tiers of service and stipulated that the cost was to be recovered over the useful life of the facilities. By providing the FCC Form 1235, the FCC permitted cable operators to increase the regulated rate through cost-based incremental increases on the regulated service tiers, ensuring the operator the desired incentive to make additional bandwidth available on the regulated service tiers.

IV. Cost-of-Service Regulation

Cost-of-service regulation has been used by public utility regulators for over 50 years to set rates for services such as electricity, telephone, and as is the case here, cable television. The basic tenet of cost-of-service regulation is that these monopoly or near-

monopoly services are to be priced based on the costs associated with the investment and expenses related to these services. In the traditional cost-of-service regulatory model the general formula is:

$$RR = (RB * ROR) + EXP$$

Where:

RR = Revenue Requirements;

RB = Rate Base (i.e., net assets dedicated to utility service);

ROR = Rate of Return (i.e., fair return on both equity and debt); and

EXP = Operating Expenses including direct, indirect expenses, depreciation and income taxes.

In determining the value of the Rate Base, the regulator considers all of the physical assets such as plant dedicated to providing the service (i.e., prudently incurred used and useful investment). The net assets of the cable operator would typically include the physical distribution and head-end facilities, reduced by the accumulated depreciation reserve. Over the years of public utility regulation, regulators have also reduced the net investment by other amounts, such as deferred income taxes (as these tax benefits are directly related to the assets dedicated to the provision of the service).

The determination of the rate of return in the public utility sector involves complex determinations of the debt and equity returns necessary to make a fair return on dedicated investment. One consideration in determining the rate of return is a company's

debt return, which typically follows the interest rates on the company's bonds (this debt rate is also used to determine the interest deduction for the income tax allowance).

Another consideration in determining the rate of return is a company's equity return, which is more difficult to determine. The goal of the regulator is to set the equity return at a level sufficient for the company to remain valuable to investors. Since 1996 the FCC has presumed to be reasonable a rate of return at 11.25% for both debt and equity in Form 1235 filings.

Operating expenses typically include all of the direct expenses associated with the service being provided (e.g., programming costs, plant operating and maintenance expenses) as well as administrative expenses (e.g., management salaries, marketing expenses and employee benefits). In addition to these direct and indirect expenses, operating expenses include amounts related to depreciation and taxes. In other contexts, to the extent a public utility receives non-utility revenues from other sources, these revenues are credited against the operating expenses in determining the revenue requirements.

Traditional cost-of-service regulation typically places the burden on the regulated entity to file for a request to increase rates, based on cost increases not covered by the last cost-of-service determination. Once this filing is made, the regulator determines the necessary revenue requirements based on the current cost structure. In this way the revenue requirements are not static over the life of the facilities but rather are re-determined each time the regulated entity believes that the current revenues fall short of the revenue requirements.

Many of the physical facilities of a cable system serve more than one service offering (i.e., Basic Service, Cable Programming Service, Digital Service and Advanced Interactive Services). Because of these multiple service offerings, regulated entities have developed allocation bases to apportion the revenue requirements to each service offering. The allocation is normally cost-causative: costs are allocated to the revenue stream that causes them. In some circumstances the allocation engenders much controversy in the rate setting process, as many different cost-causative bases can be presented for the claimed costs. In the cable example, a direct assignment of programming costs to each individual tier is simple but is easily subject to abuse when the operator must apportion the distribution plant among service tiers.

V. Form 1235 Overview

The Form 1235 is identified as an “abbreviated” cost-of-service showing. While the basic revenue requirement determination in Form 1235 is similar to that of a fully allocated cost-of-service filing represented in an FCC Form 1220, there is a major difference. The Form 1235 only determines an “incremental” cost-of-service revenue requirement based on the added investment and related expenses resulting from a system upgrade. Thus, the Form 1235 only addresses the new rate bases and expenses associated with the upgrade, and not all of the underlying costs. This incremental upgrade revenue requirement is then added to the current Basic Service Tier maximum permitted rate to determine the new overall rate. This increase remains in effect through the useful life of the upgraded investment. The result is that the overall revenue requirements are not properly adjusted in future periods because the cost of service in that future period will change, but the amount of the Form 1235 rate increase will not change accordingly. If a

cable operator succeeds in reducing its costs after filing a Form 1235, it will over-recover, because it will continue to recover for costs it no longer incurs.

VI. Advanced Services

A. Issue

Advanced services are a significant benefit to the cable operator in completing a system upgrade. These new upgraded systems allow the operator to offer new unregulated services like digital cable, high speed Internet access and telephony products. These new services can have above normal income streams that can produce excess profits above the 11.25% return associated with the regulated services. If any of these services do in fact produce returns above 11.25%, the operator is assured of over-recovering its operating costs and a rate of return on its total upgraded investment from these advanced services. Assigning any of these upgrade costs to the Basic Service tier will only increase the profitability of this upgrade above a regulated level.

B. Recommendation

In the current cable marketplace, there is no need for the Form 1235. With all of the larger cable operators announcing advanced services with high penetration rates for digital services, high speed Internet services and the looming VoIP services, it is clear that a cable operator has every incentive to upgrade its plant, and can easily recover all the costs of the upgrade, based on the new, high-value, unregulated services the upgraded plant can provide. There is no need for a Basic Service customer to support by rate increases the financial viability of a system upgrade today. The FCC could eliminate this

Form almost entirely. The only case in which there might conceivably be a continuing use for the form would be if a cable operator for some reason upgraded to add bandwidth that would be used solely for traditional analog video services. In that case, it might still be useful to apply some streamlined cost-of-service test to determine whether a supra-normal recovery were necessary given the operator's voluntary decision to offer additional channels, but not advanced services.

VII. Identified Problems and Issues

Even if the Commission should conclude that the Form 1235 rate add-on must be retained despite the cable operator's ability to fully recover upgrade costs through new services, the Form itself needs a substantial overhaul. Eight years of experience with the Form has revealed multiple problems and issues based on the limited set of instructions provided by the FCC. These problems allow the cable operator to significantly over-recover a properly allocated revenue requirement on the Basic Service tier.

VIII. Useful Life

A. Overview

The rate base on which the rate of return is applied begins at the book value of the purchased (built) cost of the plant item and declines based on the accumulation of the depreciation reserve of the life of the item until it reaches zero in the last year of the depreciable life. For example, if a cable operator invested \$1,000 in a physical facility which had a book depreciation life of ten years, the net plant would start at \$1,000 and

would be zero at the end of the ten years, because \$100 of depreciation expenses would be accumulated each year, reducing the net investment gradually to zero.

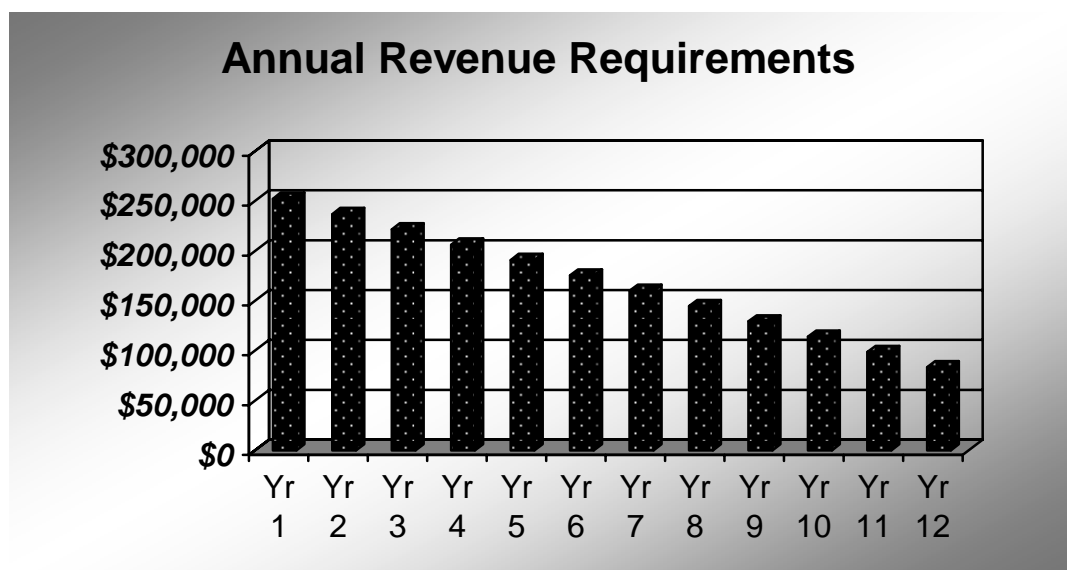
In the traditional cost-of-service filing, as with the FCC Form 1220, the regulator is only allowing a rate of return on the current net investment over the depreciable life of the facility. The rates set from the traditional cost-of-service filing remain in place until either the regulator believes the entity is earning an excessive rate of return or the entity files a new cost-of-service filing. This new determination will involve reviewing the then current net investment and operating costs of the entity.

B. Issue

The manner in which the Form 1235 is currently used allows the cable operator to over-recover the costs of an upgrade. The Form 1235 allows the operator to assign a portion of the upgrade investment (and associated expenses, including a return on investment) and add the resulting rate to the Basic Service Tier (BST) over the useful life of the upgrade. Typically, the useful life of the upgraded investment is from 10 to 12 years (the depreciable life of transmission and distribution facilities). With this long depreciable life, the operator is allowed to recover its return of operating expenses, depreciation and income taxes, and its return on net investment (i.e., rate of return). (In the balance of this report, return on shall mean the sum of the operating expenses, depreciation and income taxes, and return of shall mean a dollar return amount computed by applying the rate of return to the net investment.)

The long recovery period causes a primary problem with the current Form 1235 approach. This problem can be illustrated as follows: Assume an operator invested

\$1,000,000 on a facility upgrade that has a useful life of 12 years, and the operator was allowed the FCC's presumptive rate of return of 11.25%, which is then grossed-up for income taxes at a 39% combined tax rate. Ignoring all other costs other than depreciation expense and the return amount, the revenue requirements over the useful life of the facility ranges from over \$250,000 in the first year to just under \$85,000 in year 12. The annual amounts are shown in the following graph.



The graph clearly shows that the revenue requirements in the first year are the greatest and reduce steadily down until the last year. The total revenue requirements are \$2,014,344 over the twelve years or an average of over \$165,000 per year. This \$2 million allows a return of the full investment of \$1 million plus a return on the unamortized investment each year. The problem with the current Form 1235 is that the instructions do not require that the total revenue requirements be considered in setting the final BST add-on rate. Typically operators file the Form 1235 using the investment as of the initial year (i.e., year 1). If this first year revenue requirement of \$250,000 is used by

the operator, over the entire useful life, the recovered revenue from subscribers would be slightly over \$3 million, or 50% in excess of the \$2 million necessary. In essence the operator will experience a windfall on the implicit rate of return on investment.

C. Recommendation

This over-recovery should be corrected by requiring the operator to properly account for the decreased annual revenue requirements over the useful life of the upgraded investment.¹

IX. Capital Costs

A. Overview

Capital costs are the largest single component of the revenue requirement determined from the Form 1235. The components of the rate base must be explicitly identified by the FCC's rules. By identifying all of the specific rate base components, the regulator can ensure that the cable operator will only be allowed to gain a return on and return of the reasonable capital investments over the life of the upgrade. Subscribers should only have to pay for the reasonable net investment dedicated to regulated service. Moreover, the net investment must be offset by funds provided by the subscribers or other entities.

1. Accumulated Depreciation Reserve

Traditional utility cost of service approaches require the net investment on which a rate of return is applied to be reduced by the accumulated depreciation reserve that the

¹ The FCC recognized this problem in the NPRM released June 19, 2002, ¶ 37.

ratepayer has already returned to the company. By requiring this offset, the ratepayer is not assessed a return on component on investment for which the ratepayer has already provided a return of component.

a) Recommendation

The instructions for completing the Form 1235 and the actual Form need to be adjusted or rewritten to require that the operator reduce the gross investment by the accumulated depreciation reserve before applying the rate of return component.

2. Accumulated Deferred Income Taxes

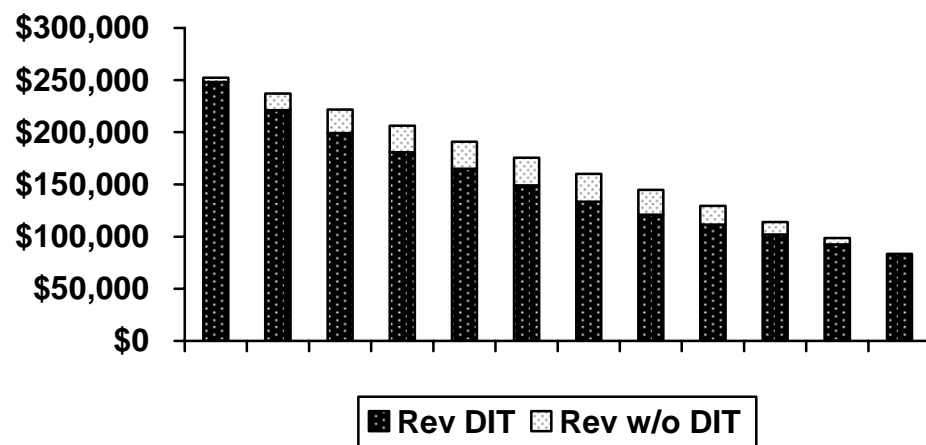
Because of the upgrade investment, the cable operator is able to utilize the income tax benefits of the IRS regulations to reduce its income tax expenses. The source of this income tax benefit is the acceleration of the depreciation expense for income tax purposes. The IRS regulations allow the operator to use significantly more depreciation expenses (tax depreciation) than what the company reports for financial statement purposes (book depreciation). Since the ratepayer is paying rates based on the book depreciation expense, the accumulated benefits that the operators receive from the IRS regulations must also be reduced from the net investment before the return on calculation is completed.

Over the useful life of the investment, the accumulated deferred income taxes will net to zero, as in the later years, the tax depreciation expense is less than the book depreciation expense. As this occurs, the operator has to pay additional taxes to the IRS for the benefits the operator gained in the earlier years. The accumulated deferred

income tax must be calculated by taking the difference between tax and book depreciation and multiplying that difference by the combined federal and state income tax rate. That result is then added to the accumulated balance, which is then subtracted from the net investment.

Using the same example as presented above, the revenue requirements are significantly reduced. The chart is presented as a stacked bar with the lower bar being the reduced revenue requirements and the upper bar being the revenue requirements without the deferred income tax benefit.²

Impact of Deferred Income Taxes (DIT)



² Based on MACRS 7 year life with half year convention.

a) Recommendation

The instructions for completing the Form 1235 and the actual Form need to be adjusted or rewritten to require that the operator reduce the gross investment by the accumulated deferred income taxes before applying the rate of return component.

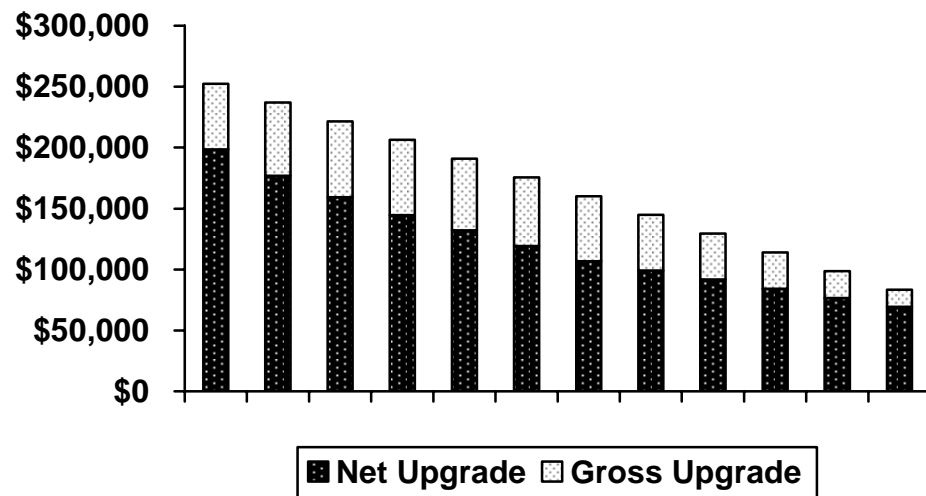
3. Embedded Capital Costs

The Form 1235 does not make clear the need to apply a principle implicit in the Commission's rate rules generally – that the operator may include only the net increase in the upgraded investment. The current benchmark and cost-of-service rate methodology for setting the underlying BST rate is meant to allow the operator to recover its expenses and its full embedded investment dedicated to cable service. Allowing the operator to include the full amount of the incremental upgraded investment, without first removing the embedded investment that has been replaced by the new plant, allows the operator to over-recover in the combined Form 1240 and Form 1235 Basic Service rates. For example, if the operator had invested \$200,000 in plant prior to the upgrade and the operator removed that \$200,000, replacing it with \$1 million new investment, the operator only needs to recover an additional \$800,000 in new investment, as the current Basic Service rate implicitly is already providing the operator with a return on and return of the original \$200,000 embedded investment.

Following the same example as used above, the revenue requirement is further reduced by only including the additional investment over the original embedded investment. As shown on the chart below, the revenue requirements are reduced to

approximately \$1.5 million over the life of the upgrade, versus the initially calculated \$2 million of useful life revenue requirements.

Impact of Net Upgrade Investment



a) Recommendation

The instructions for completing the Form 1235 and the actual Form need to be adjusted or rewritten to require that the operator reduce the gross investment by the embedded investment before applying the rate of return component ³

X. Income Taxes

A. Overview

The calculation of the revenue requirements under cost-of-service ratemaking typically allows the entity to consider income taxes on the return element. Income taxes

³ See Falcon Cable Systems (San Luis Obispo) DA 99-237 released January 27, 1999 ¶ 7.

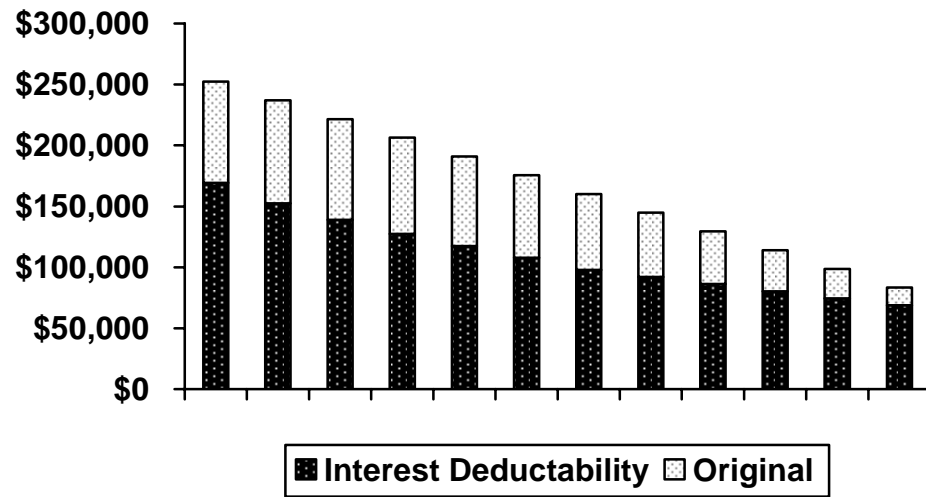
are based for a corporation on the earning (equity component) of the corporation after operating expenses, including depreciation and interest expenses. Since a cost-of-service filing is attempting to set rates on a prospective basis, the regulator does not know the actual equity earnings of the entity; therefore the typical approach used by regulators is to assess income taxes based on the equity return of the entity. In the case of the Form 1235, the FCC has set the overall rate of return at 11.25%. The individual debt and equity components of that rate of return are not specified.

B. Issue

In order to properly assess the return component, the operator must be able to determine the amount of the return component subject to income taxes. The FCC has resolved a similar problem on the income tax gross-up in its Form 1205. The Form 1235, however, does not follow the same methodology used in the 1205. Instead the Form 1235 asks the operator to identify the interest expense associated with the upgrade. Typically, operators do not include any interest expense, under the pretext that the operator has not incurred any new debt associated with the upgrade. This approach leads to the operator's essentially requesting that an all-equity return be grossed-up for income taxes. Since all major operators have significant debt leverage, this results in an operator's gaining an above-normal return.

Using the same example and assuming that the operator has 50% debt structure at a 10% interest rate, the following graph shows the further reduction in the revenue requirements from the first example.

Impact of Interest Deductibility



C. Recommendation

The FCC should modify the instructions to be consistent with the income tax gross-up used in its Form 1205. In this way the operator is only allowed to get an income tax gross-up for the non-debt portion of its capital structure.

XI. Projected Costs

A. Overview

Since the results of the Form 1235 filing made by the cable operator will be added on to the yearly recalculation of the BST rate, the filing needs to include a projection of increased or decreased operating costs over the useful life of the upgrade.

B. Issue

The instructions to the Form 1235 require the operator to project incremental/decremental expenses for plant operation and support. These costs are supposed to be calculated over the useful life of the upgrade and present-valued back to year 1. The obvious problem is the ability of the operator correctly to project incremental/decremental costs of the useful life of the upgrade. For example, some operators have concluded that costs such as incremental powering expenses are the only new costs and reject the notion that old plant is more costly to maintain than new plant, thereby lowering the maintenance costs. Other operators in their filings do not project the present value of the incremental/decremental costs. As with any projection, the local franchising authority is at a disadvantage in reviewing such calculations. Local governments do not possess specific information to counter the submission of the operator. Further, even their ability to work from the operators' data is severely limited because of cable operators' frequent refusal to provide the necessary data.

C. Recommendation

The type of costs to be included in this category must be clarified, as well as the requirements pertaining to the analyses that must be undertaken by the operator to determine these incremental/decremental costs. One possible approach would be for the FCC to assume a percentage reduction (e.g., 10 percent) in current operating and support expenses as a rebuttable presumption, with the operator having to provide support for any changes in the rebuttable presumption.

XII. Revenue Offsets

A. Overview

As with the projection of operating costs over the life of the upgrade, the cable operator must also project other revenue offsets in order to properly reflect reductions to revenue requirements because of other ancillary revenue sources.

B. Issue

The Form instructions require the operator to offset from revenue requirements any additional ancillary sources of revenues projected to be received by the operator. Advertising sales provide a specific example of such revenue offsets. Typically operators suggest that they do not anticipate additional advertising sales. However, the form does not specifically require the operator to support that assumption by showing that it has not enjoyed increased revenues from such sources for any period leading up to the cost-of-service filing. In such a situation, the local authority is again faced with the need to refute the operator's contention without information that may be necessary for making such a determination.

The problem is particularly acute when considering projected changes in advertising sales over typically a 12 year period. Operators typically suggest that advertising sales will not increase over time – but this is not reasonable in light of past history. If the operator refuses to provide any information, the local authority is handicapped in meeting a “reasonableness” test in rebutting the operator's contention. The Form should recognize that advertising sales have dramatically changed in the past

ten years. The ability of operators to take better advantage of current advertising avails by installing new equipment and by increasing advertising rates is reasonably predictable.

C. Recommendation

The Form instructions should make clear that even if an operator does not add new channels, this does not mean that the operator does not have to account for the advertising revenues generated over the system on the existing number of channels.⁴ On the contrary, a rebuttable presumption should be established that advertising sales will increase by a set percentage (e.g., a 10% increase) over the useful life of the investment, providing the operator the opportunity to rebut the presumption with sufficient showing to the local authority.

XIII. Allocation Methods

A. Overview

The allocation of common costs among the service categories in cost-of-service filings is subject to abuse. Form 1235 allows for the assignment of direct costs to service tiers, but typically these columns are not used by cable operators⁵. The allocations have historically been done based on the number of 6 MHz channels available in the upgraded system. The use of such a channel allocation basis, however, does not necessarily reflect the real benefits that each service tier receives from the upgrade.

⁴ See FCC Form 1235 instruction for line 10. (The instructions do not support the contention that only additional ancillary revenues from new channels added need be included.)

⁵ FCC Form 1235, Worksheet A, page 1, column (b).

B. Issue

Typically cable operators use a ratio of the number of 6 MHz channels on Basic Service and Cable Programming Service tiers to the total number of 6 MHz channels available on the upgraded system. While this methodology was approved by the FCC in some very early Form 1235 decisions, the FCC needs to re-assess the reasonableness of this allocation method. If no additional channels are added to the BST, the only apparent benefit to the Basic Service subscriber is some intangible potential benefit in terms of increased reliability and picture quality. Yet typically the operator assigns to the Basic Service approximately 30 percent of the overall revenue requirements, even though the greatest effects of the upgrade by far – and the greatest revenue gains for the operator – are not on the Basic Service but in the ability to offer other services. This 30 percent assignment appears to be far in excess of the speculative benefits of reliability and signal quality for the basic subscriber, relative to the benefits of new, advanced services.

C. Recommendation

The FCC should consider a weighted allocation basis based on two factors: (1) the relative number of 6 MHz channels dedicated to each tier or service, and (2) the number of incremental 6 MHz channels added to the system by tier or service. Using this weighted basis should allow Basic Service subscribers to bear some cost for potentially improved reliability and quality, and also for any increased channels being added to Basic Service.

Further, the Form 1235 as currently contemplated assumes the allocation to Basic Service will remain static over the life of the upgrade. Yet the number of channels

allocated to Basic Service could increase or decrease at any time based on the wishes of the cable operator. If such a change is not reflected in a revised allocation basis, a cable operator could over- (or under-) recover. This potential problem can be solved based on the recommendation in the Timing section below.

XIV. Timing of Review

A. Issue

Currently it appears the cable operator can file Form 1235 on any date it wishes on either a projected, or if the upgrade is complete, a final basis. It has been widely assumed that the local authority has 30 days from the date of the filing to issue a tolling order in which it requests an additional 150 days (under the cost-of-service rules) to review the filing before the rates can be implemented. At the expiration of the 180-day review period, the local authority can issue an accounting order preserving its refund rights until it finishes its review of the filing. Because most cable operators are using the FCC Form 1240 annual filing method, permitting this off-cycle filing of a Form 1235, with the necessary tolling and accounting orders, confuses the regulatory process.

B. Recommendation

In light of the significant projection problems inherent in the use of the Form 1235, the timing of Form 1235 filings should be modified. It is recommended that cable operators be required to file either the projected or final 1235 filing annually over the useful life of the upgrade, along with the operator's annual 1240 filing. By linking the

annual filing of the Form 1235 with the Form 1240/1205 filing, the Commission can increase administrative efficiencies, as the local authority would not need to issue additional tolling and accounting orders but could issue a final decision on both the Form 1235 and 1240 within 12 months under the Form 1240 rules. Further, by having the Form 1235 re-filed each year, the local authority would be able to review the annual plant operating and support cost savings and incremental ancillary other revenue dollars as they actually occur, rather than being forced to rely on a 10-12 year projection of these items.

XV. Conclusion

Based on the issues outlined above, to the extent the FCC does not decide to eliminate this Form entirely, FRC believes that the FCC needs to modify the Form 1235 process to better reflect a reasonable basis on which to develop this add-on rate to Basic Service. The significant recommendations are:

- Require the operator to consider the entire stream of revenue requirements over the life of the upgrade including accumulated depreciation and deferred income taxes, the embedded capital investment and the interest component for the income tax gross-up methodology;
- Require the operator to support incremental/decremental plant operating and support expenses or use a rebuttable presumption determined by the FCC;
- Require the operator to support incremental other revenue offsets (e.g., advertising sales) or use a rebuttable presumption determined by the FCC;

- Modify the allocation scheme used by the operator to use a weighted factor based on the current and incremental “channels” on the system; and
- Require the operator to file annually the Form 1235 with its annual Form 1240 filings, and allow the local authority 12 months to review the filed Form 1235.